No. 45110-7-II

IN THE COURT OF APPEALS, DIVISION II, OF THE STATE OF WASHINGTON

LEON PEOPLES,

Appellants,

v.

PUGET SOUNDS BEST CHICKEN, INC. et al.,

Respondents.

APPELLANT'S REPLY BRIEF

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I. APPELLANT'S REPLY ARGUMENT

The defendants are attempting to escape basic liability through technicalities, when it is clear that an injury claim, even on Fort Lewis by an individual that was not affiliated with Fort Lewis or the United States, are actionable in State Court.. Although this is a rare case, the Trial Court clearly misunderstood its jurisdiction and acted "ultra-conservatively" in dismissing this case. A person unaffiliated with the United States or its property should be able to bring a cause of action for personal injury against another person that is not affiliated with the United States or its property. If the Appellant had been a guest/customer on the base, went into Popeye's and was intentionally discriminated against by the manager, surely that customer would not have an obligation to go through the Army EEO or the EEOC to bring a claim. The appellant is in the exact same position. He was not affiliated with the US or its property and neither was his antagonistic manager. Both just worked at a fast-food restaurant that happened to be located on the base.

The Trial Court clearly erred in misapplying the summary judgment standards applicable to employment discrimination cases and erred because case law clearly states that the Trial Court had concurrent jurisdiction to hear this matter. This is especially true when Popeye's

owns eight restaurants locally and only one is on the military base. Appellant's right to sue for personal injury should not impacted because he worked at the JBLM location and not the 72nd and I-5 Street location.

V. ARGUMENT

A. This is a case of Concurrent Jurisdiction.

Mendoza v. Neudorfer Engineers, Inc., 145 Wn. App. 146, 185 P.3d 1204, concluded that the state court system (including Pierce County Superior Court) has concurrent jurisdiction over personal injuries:

> It was error for the Trial Court to dismiss a claim brought by a worker who was injured at Ft. Lewis by the alleged negligence of an employee of an engineering company performing services at the same job site.

(Emphasis added), citing to *Mendoza*.

Pierce County Superior Court is a court of general jurisdiction and has subject matter jurisdiction over this case. See In re: *Marriage of Owen and Phillips*, 126 Wn. App 487, 108 P.3d 824 (2005); *ZDI Gaming, Inc. v. State ex Rel, Washington State Gambling Commission*, 173 Wn. 2d 608, 268 P.3d 929 (2012). Appellant's claim is a personal injury claim; just as it would be had it happened five miles away at the other Popeye's location.

Mendoza applies to every species of a negligence claim, including Appellant's tort claims for intentional infliction of emotional distress and negligence claims relating to the hiring, training and supervision and retention of Mr. Martin, appellant's primary antagonist. Claims of intentional infliction of emotional distress involve a type of personal injury claim and are governed by the same statute of limitations generally applied to claims for personal injury. See *Cox v. Oasis Physical Therapy, PLC*, 153 Wn. App. 176 192, 222 P.3d 119 (2009), RCW 4.16.080(2), (Claim for intention infliction of emotional distress can be brought within the State of Washington when someone has been a victim of slurs and harassment in the workplace.)[1]

Respondent Bennie Martin's "outrageous" conduct based on appellant's sexual orientation is directly actionable in Superior Court.

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[1] In that regard the case of *Contreras v. Crown Zellerbach Corp.*, 88 Wn. 2d 735, 741, 565 P.2d 1173 (1977) is directly on point. It is noted that the principles espoused in *Contreras* were most recently reaffirmed by our supreme court in *Robel v. Roundup Corp.*, 148 Wn. 2d 35, 51-52, 59 P.3d 611 (2002). Contreras, a Hispanic American was subjected to a number of racial slurs in the work environment and sued his employer under an intention infliction of emotional distress theory. The Supreme Court in *Contreras* found such a theory to be viable due to the recognition that "the relationship between the parties is a significant factor in determining whether liability should be imposed" for intentional infliction of emotional distress. Id. at 741. The *Contreras* court emphasized "the added impetus" for permitting an outrage claim against an employer under said circumstances is the fact that "when one is in a position of authority, actual or apparent, has allegedly made racial slurs and jokes and comments" the ability to find the conduct to be "beyond the pale of human decency" becomes much easier.

The *Mendoza* opinion in this is dispositive on this case. This court has concurrent jurisdiction over plaintiff's tort claims under the terms of that opinion which is a Division II opinion thus controlling.

The "intentional wrongdoing" and malicious misconduct existed under the common law as existed in 1917 plaintiff would be entitled to recovery. To the extent that the Respondents are asserting that as of 1917 such law did not exist within the State of Washington the Respondents are in error.

The Trial Judge here was confused and misapplied the law. Judge Johnson first ruled "this is not a jurisdictional issue" and then ruled "this is not my jurisdiction." RP 14. The Trial Court then ruled that the plaintiff did not even have negligence claims recognized under Washington law had this case been bought prior to 1917 under the facts of this case. RP 15. This is clearly wrong.

The Trial Court further erred in dismissing individual defendant Bennie Martin, when there was no motion to dismiss his claims and he is not protected by any federal enclave theory. This was clearly an error of law.

For the reasons stated above, Respondents' motion for summary judgment should have been denied. Alternatively, the Court should find as a matter of law, that both claims of intentional infliction of emotional

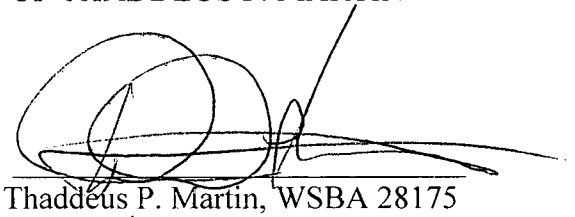
distress and negligent supervision well pre-dated the date in which JBLM was acquired by the Federal Government, thus actionable under the doctrines applicable to "Federal Enclaves".

V. CONCLUSIONS

For the reasons stated above, the Trial Court's dismissal of appellant's lawsuit should be subject to reversal in this case and remanded back for trial. This is a case of concurrent jurisdiction and the Trial Court had authority to hear this matter. A Pierce County Superior Court and jury, following remand of this case, should resolve the issues presented by this case.

DATED this 10th day of March, 2014.

LAW OFFICE OF THADDEUS P. MARTIN



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I AM NOT A PARTY TO THIS ACTION AND THAT I PLACED FOR SERVICE ON COUNSEL OF RECORD THE FOREGOING DOCUMENT VIA EMAIL FOLLOWED BY LEGAL MESSENGER, ON THE 10th DAY OF March, 2014.

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